IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 777 OF 2006

Smt.Ujwala Nilkantha Borgaonkar & Ors. ...Petitioners
V/s.
State of Maharashtra & Anr. ...Respondents

Shri C.K. Pendse for the Petitioners.
Shri V.S. Gokhale, AGP for Respondent No.1
Shri S.S. Kanitkar i/b. Shri G.S. Godbole for Respondent No.2.

CORAM : V.M. KANADE, J.

DATED : MARCH 7, 2007

P.C. :-

1. Heard the learned Counsel for the petitioners and the learned Counsel for the respondents.

2. The petitioners are the defendants and respondent no.2 is the landlord. Respondent no.2 filed the suit being RCS No.107/87 against Shri Nilkantha Raghunath Borgaokar for recovery of the tenanted premises on the ground of arrears of rent. The tenanted premises consist of a Padvi i.e. a verandah covered by shed admeasuring 30 ft. x 7 ft. under Municipal House no.90 of Ozarwadi. The trial court dismissed the suit of the plaintiff. He preferred an appeal against the said order. The appellate court allowed the appeal and

passed an order of eviction against the defendants. During the pendency, original tenant died and his heirs were brought on record. Against the said order, the present writ petition has been filed by the defendants.

3. The learned Counsel for the petitioners vehemently urged that the notice which was issued initially demanding the arrears of rent was addressed by respondent no.2 in his capacity as the owner of the premises and as a landlord and the suit was also filed initially in the said capacity. However, after two years, the plaint was amended and it was averred that the plaintiff was pursuing the suit as rent collector as there was partition in the family and the suit premises were given to his brother as his share and therefore, he was pursuing the suit in his capacity as a rent collector as directed by his brother. The learned Counsel submitted that the notice itself, therefore, was illegal since it was wrongly mentioned in the notice that the plaintiff was the owner and landlord of the premises. He submitted that since the initiation of the proceedings itself was illegal, the suit was liable to

be dismissed as the notice itself was null and void. He further submitted that the suit even otherwise should not be filed by the rent collector as he has no locus to file the suit as he is not the landlord of the premises. It was further strenuously urged that certain facts which have come to the knowledge of the plaintiff ought to have been brought on record and the burden of proving these facts were on the plaintiff as provided under Section 106 of the Evidence Act. He submitted that the lower appellate court had not taken into consideration this submission which was made by the defendants.

4. The learned Counsel for respondent no.2 submitted that the trial court had given a finding that the plaintiff had proved his case so far as arrears of rent is concerned, however, the trial court dismissed the suit on the ground that the rent collector did not have locus to file the suit. He has submitted that the lower appellate court had given a finding after considering the legal position that the rent collector did have locus to file a suit.

5. I have given my anxious consideration to the submissions made by both the learned Counsel for the petitioners and the respondents. In the present case, the premises consist of Padavi i.e. verandah covered by shed. There is concurrent finding of both the courts regarding the arrears of rent. The submission made by the learned counsel for the petitioners, as a rent collector plaintiff had no locus to file the suit for eviction of the tenant, cannot be accepted. It is settled position in law that as the defence of landlord as provided under Section 15(3) of the Bombay Rent Act includes a rent collector. This court in the case of **Mishrimal Chhogalal Vs. N.B. Patel (Volume LXV 1962 Bombay Law Journal 15)** has held that a rent collector has a locus to file a suit for eviction on the ground of arrears of rent. The lower court also has given a finding that the trial court had clearly erred in holding the plaintiff is not the landlord for the purpose of Section 12 of the Bombay Rent Act. I have perused the judgment and order of the lower appellate court wherein the court has considered the admissions given by the defendants and therefore, rejected the plea

that the plaintiff's brother personally collected the rent after the partition. Lastly, submission of the learned counsel for the petitioners that the notice which was issued by the plaintiff was defective, also cannot be accepted if the pleadings in the plaint and the subsequent amendment is taken into consideration. It is obvious that at the relevant time, when the notice was issued, the plaintiff was owner of the premises since he had undivided share in the suit property. The suit was filed in 1987. More than 20 years have passed and the dispute is regarding a Padavi. Considering these circumstances also, in my view, this is not a fit case to interfere with the judgment and order passed by the lower appellate court. No case is made out for interfering with the said order while exercising writ jurisdiction under Article 227 of the Constitution of India.

. Writ Petition is, accordingly, dismissed.

(V.M. Kanade, J.)